

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

SEP 10 2019

JULIA C. DUDLEY, CLERK  
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UNITED STATES OF AMERICA,	)	CASE NO. 4:18CR00020
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	
FRANKLIN DERON MYERS, JR.,	)	By: Hon. Jackson L. Kiser
	)	Senior United States District Judge
Defendant.	)	

Defendant Franklin Deron Myers, Jr., a federal inmate, has filed a pro se submission that the court has construed and docketed as both a notice of appeal and a motion to vacate, set aside or correct the sentence under 28 U.S.C. § 2255, alleging ineffective assistance of counsel. The notice of appeal has been processed in the usual manner to the United States Court of Appeals for the Fourth Circuit.

The well-established general rule is that, absent extraordinary circumstances, the district court should not consider a defendant's § 2255 motion while his direct appeal is pending. See United States v. Weaver, 121 F.3d 702 (4th Cir. 1997) (unpublished) (citing Bowen v. Johnston, 306 U.S. 19, 26-27 (1939)). I find no extraordinary circumstances arising from the allegations in Myers' submission compelling me to address his ineffective assistance of counsel claim under § 2255 during the pendency of his direct appeal. Accordingly, I will dismiss the § 2255 motion as premature, without prejudice to Myers' right to file a § 2255 motion after the completion of direct appeal proceedings. The Clerk will send a copy of this memorandum opinion and accompanying order to the defendant.

ENTERED this 10<sup>th</sup> <sup>Sep.</sup> day of ~~July~~, 2019.

*Jackson L. Kiser*  
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SENIOR UNITED STATES DISTRICT JUDGE